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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/586,291
Filing Date: March 14, 2007
Appellant(s): REID ET AL.

Charles N. J. Ruggiero
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 27 May 2011 appealing from the Office action mailed 27 October 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1-3, 5-7, 9-22 and 24-34.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2003/0104176	Schwenk	6-2003
4,290,630	Lee	9-1981
6,471,247	Hardwick et al.	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claim 1-3, 5-7, 9-10, 18-22, 24 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0104176 to Schwenk ("Schwenk") and U.S. Patent No. 4,290,630 to Lee ("Lee").

Regarding claim 1, Schwenk and Lee disclose a security substrate comprising: i) a substrate (Schwenk security documents 1a-b, shown in figs. 2a-b; Lee fig. 5); and ii) at least two elongate security elements (Schwenk 7a-d, 8a-b and paragraphs 17 and 37; Lee threads 2 and col. 3, lines 53-60) wherein said at least two security elements are at least partially embedded within said substrate and run substantially parallel to each other with a gap therebetween, wherein said at least two security elements and said gap occupy a zone (see Schwenk figs. 2a-b and Lee figs. 3a-d), wherein said at least two security elements have different security features (see Schwenk pagraph 37; see Lee figs. 3a-g, showing physically different security elements), but fail to specifically disclose: i) each security element having a width of less than or equal to 6mm; ii) the gap between parallel security elements being no greater than 10mm; and iii) said zone having a total cross-directional width that is less than or equal to 14mm. However, it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claim 2, Schwenk and Lee disclose a security substrate as claimed in claim 1, but fail to specifically disclose said at least two security elements each having a

width of less than or equal to 4mm. However, it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claim 3, Schwenk and Lee disclose a security substrate as claimed in claim 2, but fail to specifically disclose said at least two security elements each having a width of less than or equal to 2mm. However, it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claim 5, Schwenk and Lee disclose a security substrate as claimed in claim 1, but fail to specifically disclose said gap being greater than or equal to 1mm. However, it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claim 6, Schwenk and Lee disclose a security substrate as claimed in claim 5, but fail to specifically disclose said gap being greater than or equal to 2mm. However, it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claim 7, Schwenk and Lee disclose a security substrate as claimed in claim 1, wherein said at least two security elements have identical security features (see

Schwenk fig. 1 and paragraph 36, describing an alternate embodiment and Lee figs. 3a-d).

Regarding claim 9, Schwenk and Lee disclose a security substrate as claimed in claim 1, wherein said at least two security elements wander from a linear path in a cross-direction of said substrate, and wherein said cross-directional width of said zone includes an amplitude of said wander (see Schwenk figs. 2a-b and Lee figs. 3a-g)

Regarding claim 10, Schwenk and Lee disclose a security substrate as claimed in claim 1, wherein at least one of said at least two security elements are wholly embedded within said substrate (see Schwenk paragraph 18; note that areas 5a-b, 7a-b and 7a-d are wholly embedded in their respective substrate security documents; also see Lee abstract).

Regarding claim 18, Schwenk and Lee disclose a security article comprising: i) a substrate (Schwenk fig.1; Lee fig. 5); and ii) at least two elongate security threads (Schwenk 7a-d, 8a-b and paragraphs 17 and 37; Lee threads 2 and col. 3, lines 53-60), wherein said at least two security threads are at least partially embedded within said substrate and run substantially parallel to each other with a gap therebetween, wherein said at least two security threads and said gap occupy a zone (see Schwenk figs. 2a-b and Lee figs. 3a-d), but fails to specifically disclose: i) each of said security threads having a width of less than or equal to 6mm; ii) said gap between said security threads being no greater than 10mm; and iii) said zone having a total cross-directional width that is less than or equal to 18mm. However, it has been held that “where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the

optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claim 19, Schwenk and Lee disclose a security substrate as claimed in claim 1, wherein said substrate is plastic (see Schwenk paragraph 2 and Lee col. 1, lines 15-16).

Regarding claim 20, Schwenk and Lee disclose a security substrate as claimed in claim 19, wherein said substrate is a filmic plastic (see Schwenk paragraph 2 and Lee col. 1, lines 15-16).

Regarding claim 21, Schwenk and Lee disclose a security substrate as claimed in claim 1, wherein said substrate is a mix of paper and plastic fibres (see Schwenk paragraph 2 and Lee col. 1, lines 15-16).

Regarding claim 22, Schwenk and Lee disclose a security substrate as claimed in claim 1, wherein said substrate is paper (see Schwenk abstract and Lee col. 1, line 17).

Regarding claim 24, Schwenk and Lee disclose a security article as claimed in claim 18, wherein said security article is a banknote (see Schwenk paragraph 24 and Lee col. 1, lines 8-9).

Regarding claim 30, Schwenk and Lee disclose a security article as claimed in claim 18, wherein said security article is a passport (see Schwenk paragraph 24 and Lee col. 1, lines 5-10).

Regarding claim 31, Schwenk and Lee disclose a security article as claimed in claim 18, wherein said security article is a certificate (see Schwenk paragraph 24 and Lee col. 1, lines 5-10).

Regarding claim 32, Schwenk and Lee disclose a security article as claimed in claim 18, wherein said security article is a document of value (see Schwenk paragraph 24 and Lee col. 1, lines 5-10).

Regarding claim 33, Schwenk and Lee disclose a security substrate comprising: i) a substrate having a zone with a cross-directional width (note that the areas on the Schwenk and Lee substrates containing security elements may be considered such a "zone with a cross-directional width"); ii) a first elongate security thread (see Schwenk 7a-d, 8a-b and paragraphs 17 and 37; Lee threads 2 and col. 3, lines 53-60) at least partially embedded within said substrate (see Schwenk paragraph 18; note that areas 5a-b, 7a-b and 7a-d are wholly embedded in their respective substrate security documents; also see Lee abstract) and disposed in said zone (see Schwenk figs. 2a-b and Lee figs. 3a-d), said first elongate security thread having a first security feature (see Schwenk pagraph 37; also see Lee figs. 3a-g, showing physically different security elements); and iii) a second elongate security thread (see Schwenk 7a-d, 8a-b and paragraphs 17 and 37; Lee threads 2 and col. 3, lines 53-60) at least partially embedded within said substrate (see Schwenk paragraph 18; note that areas 5a-b, 7a-b and 7a-d are wholly embedded in their respective substrate security documents; also see Lee abstract) and disposed in said zone (see Schwenk figs. 2a-b and Lee figs. 3a-d), said second elongate security thread having a second security

feature (see Schwenk pagraph 37; also see Lee figs. 3a-g, showing physically different security elements), said first and second elongate security threads running substantially parallel to each other within said zone with a gap therebetween (see Schwenk figs. 2a-b and Lee figs. 3a-d), wherein said first and second security features have a difference (see Schwenk pagraph 37; also see Lee figs. 3a-g, showing physically different security elements), but fails to disclose: i) said cross-direcitonal width being less than or equal to 18mm; and ii) said gap being no greater than 10mm. However, it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claim 34, Schwenk and Lee disclose a security article as claimed in claim 32, wherein said difference is selected from the group consisting of opposing holographic movement effects, mutually opposed holographic image replay, different information, different viewing angles, different visual impression, different thermochromic transition temperatures, different colorshift features, and opposed color switch features (see Schwenk pagraph 37; also see Lee figs. 3a-g, showing physically different security elements, which provides for differing visual impressions).

4. Claims 11-17 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwenk and Lee in view of U.S. Patent No. 6,471,247 to Hardwick et al. ("Hardwick").

Regarding claim 11, Schwenk and Lee disclose a security substrate as claimed in claim 1, but fails to disclose at least one of said at least two security elements being exposed at windows in at least one surface of said substrate.

Hardwick teaches the concept of providing a window in at least one surface of a substrate (18, see fig. 5, showing a single security element and fig. 2, showing multiple security elements exposed in the window).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to position a Hardwick window on the Schwenk and Lee substrates in order to render a security device lying beneath visible, as explicitly taught by Hardwick (see abstract).

Regarding claim 12, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 11, wherein all of said at least two security elements are exposed via the same window (Hardwick fig. 2).

Regarding claim 13, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 1, wherein each of said at least two security elements is exposed at separate windows to those at which the other security element is exposed (note that windows may be positioned upon the substrates as desired).

Regarding claim 14, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 13, wherein said window via which one of said at least two security elements is exposed is in register with said window via which another of said at least two security elements is exposed (note that windows may be positioned upon the substrates as desired).

Regarding claim 15, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 13, wherein said window via which one of said at least two security elements is exposed is not in register with said window via which another of said at least two security elements is exposed (note that windows may be positioned upon the substrates as desired).

Regarding claim 16, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 1, wherein each of said at least two security elements is provided with at least one security feature which is registered with at least one security feature on another of said at least two security elements (note that windows may be positioned upon the substrates as desired).

Regarding claim 17, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 1, wherein each of said at least two security elements is provided with at least one security feature which is registered with at least one security feature on said substrate (note that windows may be positioned upon the substrates as desired).

Regarding claim 25, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 1, wherein at least one of said two security elements is exposed in at least one hole or aperture through the substrate (see Hardwick fig. 2).

Regarding claim 26, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 25, wherein all of said at least two security elements are exposed at the same hole or aperture (see Hardwick fig. 2).

Regarding claim 27, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 25, wherein each of said at least two security elements is exposed in a separate hole or aperture to those at which the other security element is exposed (note that windows may be positioned upon the substrates as desired).

Regarding claim 28, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 27, wherein said hole or aperture via which one of said at least two security elements is exposed is in register with said hole or aperture via which another of said at least two security elements is exposed (note that windows may be positioned upon the substrates as desired).

Regarding claim 29, Schwenk and Lee in view of Hardwick discloses a security substrate as claimed in claim 27, wherein said hole or aperture via which one of said at least two elements is exposed is not in register with said hole or aperture at which another of said at least two security elements is exposed (note that windows may be positioned upon the substrates as desired).

(10) Response to Argument

(a) First Ground- Rejection of claims 1-3, 5-7, 9-22, and 24-34 under 35 U.S.C. 103(a) over Schwenk.

(1) Independent claim 1, as well as dependent claims 2-3, 5-7 and 9-17, stand or fall together

Appellants argue that Schwenk subareas 7a-7d and central areas 8a-8b fail to read on the claimed security elements (see Appeal Brief pg. 4, lines 7-12).

Examiner respectfully disagrees. Appellants' claim 1, in part, calls for "at least two security elements" that are "at least partially embedded within said substrate" and "run substantially parallel to each other…" Schwenk subareas (7a-7d) and central areas (8a-8b) are regions within which security features are disposed. Per the Merriam-Webster dictionary, the term "element" is defined as "a distinct part of a composite device." In the instant matter, Schwenk's security document (1) represents a composite device, with said regions of subareas (7a-7d) and central areas (8a-8b) representing distinct parts of said composite device. As such, said regions can be considered to be "elements." Given that subareas (7a-7d) and central areas (8a-8b) are known to include security features therein, said regions may be considered to be "security elements." A cursory review of Schwenk figs. 2a-2b reveals that the aforementioned security elements are indeed embedded within the boundaries of the substrate security document (1) in much the same manner that a photograph is commonly embedded within the boundaries of a newspaper's front page. Furthermore, a cursory review of Schwenk figs. 2a-2b reveals that the aforementioned security elements do indeed run substantially parallel to each other.

Appellants argue that the claimed gap size of "no greater than 10mm" and claimed zone cross-directional width of "less than or equal to 14mm" yields much more than predictable results (see Appeal Brief pg. 6, lines 17-18) and that the claimed gap and zone width have been very carefully selected to provide the intended visual impact (see Appeal Brief pg. 7, lines 1-2).

Examiner respectfully disagrees. Appellants' filed specification provides that the total cross-directional width of a zone occupied by two security elements and the gap therebetween may be up to 18 meters (see Substitute Specification- Clean Version pg. 4, lines 28-30) or 18 millimeters (see Substitute Specification- Clean Version pg. 13, lines 23-26 and pg. 14, lines 11-12). Such disclosure implicitly acknowledges that the invention would function in the same manner even if values outside of the claimed range were used, demonstrating a lack of criticality of the claimed range. As such, employing the claimed range of values does indeed yield predictable results. Accordingly, the selection of the particular values set forth within claim 1 was obvious in nature.

Appellants argue that Hardwick fails to "cure" the aforementioned "defects and deficiencies" (see Appeal Brief pg. 7, lines 4-5).

Examiner agrees. However, Examiner respectfully notes that Hardwick is used only for its disclosure of the concept of providing windows in security documents. Hardwick was never utilized to teach any of the aforementioned elements and features.

(2) Independent claims 18 and 33, as well as dependent claims 19-22, 24-32 and 34 stand or fall together

Appellants argue that Schwenk subareas 7a-7d and central areas 8a-8b fail to read on the claimed security threads (see Appeal Brief pg. 7, line 14- pg. 8, line 2).

Examiner respectfully disagrees. Appellants' claims 18 and 33, in part, call for "at least two elongate security threads" that are "at least partially embedded within said substrate" and "run substantially parallel to each other…" Schwenk subareas (7a-7d)

and central areas (8a-8b) are regions within which security features are disposed. Per the Merriam-Webster dictionary, the term "thread" is defined as "a filament." In the instant matter, Schwenk's security document (1) represents a composite device, with said regions of subareas (7a-7d) and central areas (8a-8b) representing filament-like strips of said composite device. As such, said regions can be considered to be "threads." Given that subareas (7a-7d) and central areas (8a-8b) are known to include security features therein, said regions may be considered to be "security threads." A cursory review of Schwenk figs. 2a-2b reveals that the aforementioned security threads are indeed embedded within the boundaries of the substrate security document (1) in much the same manner that a photograph is commonly embedded within the boundaries of a newspaper's front page. Furthermore, a cursory review of Schwenk figs. 2a-2b reveals that the aforementioned security threads do indeed run substantially parallel to each other.

Appellants argue that claims 18 and 33 require "security threads" and, thus, differ from claim 1 which requires "security elements" (see Appeal Brief pg. 8, lines 6-7).

Examiner respectfully disagrees. Examiner asserts that claims 1, 18 and 33 are individual independent claims, and as such, are each entitled to treatment independent of one another. As such, the interpretation of prior art as applied to claim 1 will not serve to prejudice the interpretation of prior art as applied to claims 18 and 33.

Appellants argue that the "mottled fibres" of Schwenk cannot reasonably be considered to be "elongate threads" as required by claims 18 and 33 (see Appeal Brief pg. 8, lines 14-16).

Examiner notes that no such assertion was made regarding Schwenk's "mottled fibres." Accordingly, Appellants' argument is moot.

Appellants argue that Schwenk discloses in its description of the prior art that: "mottled fibres can also be twisted or interwoven to form security threads" (see Appellants' Arguments/Remarks pg. 8, lines 17-18).

Examiner acknowledges said passage within Schwenk and notes that said passage actually acts in support of Examiner's interpretation of the reference, as it evinces that the regions in which said mottled fibres are located (subareas 7a-7d and central areas 8a-8b) may be considered to be threads or threadlike.

Appellants argue that Schwenk fails to disclose claim 18's proposed gap and total cross-directional width (see Appeal Brief pg. 8, line 23- pg. 9, line 2).

Examiner respectfully directs Appellants to see the arguments set forth above addressing the lack of criticality of the claimed ranges.

Appellants argue that Hardwick fails to "cure" the aforementioned "defects and deficiencies" (see Appeal Brief pg. 9, lines 17-18).

Examiner agrees. However, Examiner respectfully notes that Hardwick is used only for its disclosure of the concept of providing windows in security documents. Hardwick was never utilized to teach any of the aforementioned elements and features.

(b) Second Ground- Rejection of claims 1-3, 5-7, 9-22, and 24-34 under 35 U.S.C. 103(a) over Lee.

(1) Independent claims 1, 18 and 33, as well as dependent claims 2-3, 5-7, 9-17, 19-22, 24-32, and 34, stand or fall together

Appellants argue that Lee fails to disclose more than one security element or security thread (see pg. 10, lines 15-16).

Examiner respectfully disagrees. Lee col. 3, lines 8-10 recites that a sheet of suitable material is to be slit into a multiplicity of threads 2. Also, col. 3, lines 48-51 specifically provides that "[t]he threads 2, after separation, may be cut into suitable lengths which are then inserted into or affixed to the surface of the sheet material of the documents concerned." Furthermore, it is well settled that the duplication of parts already taught (provision of multiple such sets of threads 2 on a substrate banknote 11) is merely an obvious variant of the disclosed invention.

Appellants argue that Lee fails to provide an enabling disclosure on how one could provide more than one elongate security element or thread partially embedded as required by claims 1, 18 and 33 (see Appeal Brief pg. 11, lines 12-14).

Examiner respectfully disagrees. As set forth above, Lee col. 3, lines 8-10 recites that a sheet of suitable material is to be slit into a multiplicity of threads 2. Also, col. 3, lines 48-51 specifically provides that "[t]he threads 2, after separation, may be cut into suitable lengths which are then inserted into or affixed to the surface of the sheet material of the documents concerned." Furthermore, it is well settled that the

duplication of parts already taught (provision of multiple such sets of threads 2 on a substrate banknote 11) is merely an obvious variant of the disclosed invention. Examiner notes that a second thread 2 would be lie across the surface of banknote 11 in much the same manner as thread 2 shown in fig. 5. Examiner further notes that Appellants must realize that Lee's full and complete disclose lies not only in its pictorial figures 1-9, but also extends into the body of written words following said figures.

Appellants argue that Lee fails to disclose or suggest that the threads embedded on its substrate are positioned "parallel" to one another (see Appeal Brief pg. 11, lines 15-17).

Examiner respectfully asserts that in light of the previous response regarding the provision of more than one elongate security thread upon the Lee banknote (especially in light of the configuration of the first security thread shown in fig. 5), it is clear that the second, third, etc. security threads to be placed upon said banknote will run parallel to the first. Any other positioning configuration would interfere with one's ability to read the edge formations of said security threads.

Appellants argue that Lee fails to disclose claim 18 and 33's proposed gap and total cross-directional width (see Appeal Brief pg. 13, lines 7-10) and that the claimed gap and zone width have been very carefully selected to provide the intended visual impact (see Appeal Brief pg. 14, lines 10-12).

Examiner respectfully directs Appellants to see the arguments set forth above addressing the lack of criticality of the claimed ranges.

Appellants argue that Hardwick fails to "cure" the aforementioned "defects and deficiencies" (see Appeal Brief pg. 14, lines 13-16).

Examiner agrees. However, Examiner respectfully notes that Hardwick is used only for its disclosure of the concept of providing windows in security documents. Hardwick was never utilized to teach any of the aforementioned elements and features.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Justin V. Lewis/

Examiner, Art Unit 3725

Conferees:

/Dana Ross/

Supervisory Patent Examiner, Art Unit 3725

/BOYER D ASHLEY/

Supervisory Patent Examiner, Art Unit 3724